

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HONG MAI,

Plaintiff,

- against -

CARL RABUM, *Commissioner of the
Social Security Administration,*

Defendant.
-----X

HONG MAI,

Plaintiff,

- against -

CARL RABUM, *Commissioner of the
Social Security Administration,*

Defendant.
-----X

**REPORT AND
RECOMMENDATION**

06 CV 2978 (ARR)

ROSS, J.

CV 10- 2028

On June 2, 2006, plaintiff Hong Mai, proceeding pro se, filed an action against the Commissioner of the Social Security Administration ("SSA") seeking review of the SSA's denial of plaintiff's request for disability benefits. See Mai v. Rabum, No. 06 CV 2978. On July 12, 2007, the district court remanded the case to the Commissioner for further consideration. On November 7, 2008, pursuant to the remand order, an Administrative Law Judge ("ALJ") determined that Ms. Mai was not entitled to the benefits that she sought. Thereafter, Ms. Mai properly appealed the ALJ's decision, which was affirmed by the SSA Appeals Council.

By letter dated January 11, 2010, the SSA informed Ms. Mai that the Appeals Council had upheld the ALJ's decision to deny her application for benefits, and that she would have to file a new civil action within 60 days of receipt of the instant letter in order to seek judicial review of the Commissioner's final decision. (Gov't 1/28 Ltr.,¹ Ex. A).

Thereafter, on March 2, 2010, Ms. Mai filed a motion with this Court seeking leave to file a civil complaint, as per the October 10, 2000 Order of the Honorable Allyne R. Ross, which enjoined Ms. Mai from filing any civil action in the Eastern District of New York without obtaining prior leave from the undersigned.

Having reviewed the Proposed Complaint, it appears that Ms. Mai seeks to challenge the denial of her social security benefits and that her Proposed Complaint is properly filed in the Eastern District of New York. Additionally, it appears that Ms. Mai's Proposed Complaint is timely; she filed it within 60 days of her receipt of the decision of the Appeals Council. Under these circumstances, the Court finds no reason to prevent this case from moving forward.

Accordingly, the Court respectfully recommends that Ms. Mai's motion for leave to file the Proposed Complaint be granted, and that the Clerk of the Court process the Proposed Complaint accordingly.²

Any objections to this Report and Recommendation must be filed with the Clerk of the

¹Citations to "Gov't 1/28 Ltr." refer to the Letter to the Court by the United States of America, filed on January 28, 2010.

²Additionally, on November 23, 2009, plaintiff filed a motion in Mai v. Rabum, No. 06 CV 2978, seeking leave to file a motion to compel a grant of benefits. The Court respectfully recommends that this motion be denied, since the proper mechanism for Ms. Mai to challenge the decision of the Appeals Council in this case is by filing a new civil action, as Ms. Mai did on March 2, 2010.

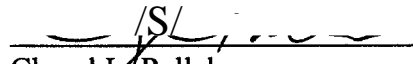
Court, with a copy to the undersigned, within fourteen (14) days of receipt of this Report. Failure to file objections within the specified time waives the right to appeal the District Court's Order.

See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72; Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989).

The Clerk is directed to send copies of this Order to the parties either electronically through the Electronic Case Filing (ECF) system or by mail.

SO ORDERED.

Dated: Brooklyn, New York
May 4, 2010


Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York